



**NEW JERSEY LAW REVISION COMMISSION**

**Draft Final Report Regarding the  
Uniform Commercial Code – 2022 Amendments**

**March 10, 2023**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

Laura C. Tharney, Executive Director  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [lct@njlrc.org](mailto:lct@njlrc.org)  
Web site: <http://www.njlrc.org>

## Summary of Proposed Changes to the Uniform Commercial Code

### Background

For more than 60 years, the Uniform Commercial Code (UCC) has been enacted in nearly identical form in every state and U.S. jurisdiction.<sup>1</sup> The UCC provides rules for: “the sale or lease of goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment property, and secured transactions in personal property.”<sup>2</sup>

The UCC is sponsored by the American Law Institute and the Uniform Law Commission, and it is periodically updated to address developments in the law and technology.<sup>3</sup> This has enabled the UCC to transition from the “goods-based economy” of the 1940s and 1950s to the modern economy’s “shift toward services, software, and information-based transactions.”<sup>4</sup>

Significant updates to the UCC were released by the Uniform Law Commission (ULC) in 2022 to address “emerged and emerging technologies.”<sup>5</sup> They are intended to “bring the UCC into the digital age by providing commercial law rules for a new category of transactions: the transfer and leveraging of virtual currencies and certain other digital assets.”<sup>6</sup>

The UCC Amendments reflect the work of the American Law Institute and the Uniform Law Commission, along with “approximately 350 knowledgeable advisors and stakeholder observers who met dozens of times over a three-year period to reach consensus on updates to this crucial area of state law.”<sup>7</sup> The ALI and ULC committee appointed in 2019 included, and worked with, lawyers experienced in UCC matters and those with practices that concentrate on emerging technological developments.<sup>8</sup> Individuals who were observers to the committee’s work were drawn from “academia, trade groups, government agencies, law firms, private technology

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<sup>1</sup> Uniform Law Commission, Overview of the 2022 Amendments to the Uniform Commercial Code – Emerging Technologies, p.1, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/a116549b-6067-5f82-83ac-3501c7ad882d\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989316&Signature=f8Kf2wzK2uZiOo%2FVgMgWWZ3IdIA%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/a116549b-6067-5f82-83ac-3501c7ad882d_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989316&Signature=f8Kf2wzK2uZiOo%2FVgMgWWZ3IdIA%3D) (last visited March 4, 2023).

<sup>2</sup> Uniform Law Commission, Why Your State Should Adopt the 2022 Amendments to the Uniform Commercial Code, p.1, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/1a829bab-b98a-68f7-a7e8-4d093e2ef528\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989808&Signature=HM3tuLzzCRknxg2udbcmWHeF7I8%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/1a829bab-b98a-68f7-a7e8-4d093e2ef528_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989808&Signature=HM3tuLzzCRknxg2udbcmWHeF7I8%3D) (last visited March 4, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Uniform Law Commission, A Summary of the 2022 Amendments to the Uniform Commercial Code, July 21, 2022, p. 1, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2a18c952-5db5-ca16-2274-8c7531990903\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678133136&Signature=df%2BRhGImNYrE%2FERndOnwsE5fa7I%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2a18c952-5db5-ca16-2274-8c7531990903_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678133136&Signature=df%2BRhGImNYrE%2FERndOnwsE5fa7I%3D) (last visited March 6, 2023).

companies, and foreign participants from multinational law reform organizations or who are active in technology-related law reform efforts in their own countries.”<sup>9</sup>

The 2022 Amendments to the UCC (Amendments) support commercial activity involving “controllable electronic records” (CERs), which are defined to include “virtual currencies, non-fungible tokens, and electronic promises to pay.”<sup>10</sup> The ULC explained that the Amendments: “will reduce transaction costs and the cost of credit,” are “narrowly focused to avoid stifling innovation,” “preserve uniformity of state law,” “clarify rules for money in electronic form,” “update UCC terminology for the digital age,” are drafted using technology-neutral language to “apply to future technologies,” and protect the expectations of the parties to transactions that pre-date the effective date of the amendments, including a “grace period to preserve pre-established priorities.”<sup>11</sup>

According to the ULC, as of the date of this Report, the Amendments have not yet been enacted in any jurisdiction, but they have been introduced in the following 22 jurisdictions: Arizona, California, Colorado, the District of Columbia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Washington, and West Virginia.<sup>12</sup>

The Amendments have not yet been introduced in New Jersey, but there are bills pending in the current legislative session that pertain to some of the concepts addressed in the Amendments.<sup>13</sup> As with other changes to the law in areas covered by the UCC, it seems as though it may be advantageous for the law in this area to remain consistent with the UCC provisions in other states, and there may be benefits to incorporating provisions that have been extensively vetted by a broad cross-section of interested parties.

### **Material Covered By 2022 Amendments**

The Summary of the Amendments provided by the UCC explained that the Amendments

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<sup>9</sup> *Id.*

<sup>10</sup> Uniform Law Commission, Why Your State Should Adopt the 2022 Amendments to the Uniform Commercial Code, p.1, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/1a829bab-b98a-68f7-a7e8-4d093e2ef528\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989808&Signature=HM3tuLzzCRknxg2udbcmWHeF7I8%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/1a829bab-b98a-68f7-a7e8-4d093e2ef528_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1677989808&Signature=HM3tuLzzCRknxg2udbcmWHeF7I8%3D) (last visited March 4, 2023).

<sup>11</sup> *Id.* at 1-2.

<sup>12</sup> Uniform Law Commission, UCC, 2022 Amendments to, Enactment History, <https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac> (last visited March 6, 2023).

<sup>13</sup> These include: A1975 (Virtual Currency and Blockchain Regulation Act), A2371 (Digital Asset and Blockchain Technology Act), A3287 (Prohibits public officials from accepting virtual currency and non-fungible tokens as gifts), A3288 (Establishes Blockchain Promotion and Integration Program), S1267 (Virtual Currency and Blockchain Regulation Act), S1756 (Digital Asset and Blockchain Technology Act), and S3142 (Establishes Blockchain Promotion and Integration Program).

respond to market concerns about the lack of definitive commercial law rules for transactions involving digital assets, especially relating to (a) negotiability for virtual (non-fiat) currencies, (b) certain electronic payment rights, (c) secured lending against virtual (non-fiat) currencies, and (d) security interests in electronic (fiat) money, such as central bank digital currencies.

“The amendments also address other technological developments affecting electronic chattel paper, negotiable instruments, payment systems, electronic documents of title, and sales and leases of goods.”<sup>14</sup> They “clarify the scope of Articles 2 and 2A when transactions combine the sale or lease of goods with other matters, a topic of importance in transactions affected by emerging technologies.”<sup>15</sup> The Amendments also clarify provisions that are unrelated to the technological developments that are the primary focus of the work.<sup>16</sup>

“The amendments address only state commercial law rules. They do not address the federal or state regulation or taxation of digital assets or money transmitter or anti-money laundering laws. The amendments defer to law outside of the UCC to answer many questions concerning digital assets.”<sup>17</sup>

The Amendments define and concern “controllable electronic records” (CERs).<sup>18</sup> These are a class of digital assets including “certain virtual (non-fiat) currencies, non-fungible tokens, and digital assets in which specified payment rights are embedded.”<sup>19</sup>

“The amendments provide for a CER to be in effect negotiable, i.e., capable of being transferred in such a way as to cut off competing property claims (including security interests) to the CER (a ‘take-free’ rule similar to the UCC rule for securities).”<sup>20</sup> They address the perfection of a security interest in a CER, and the priority of perfected interests.<sup>21</sup>

In addition, the Amendments address “security interests in electronic (fiat) money (that is, a virtual currency adopted by a government as a medium of exchange, if the virtual currency did not exist prior to the adoption).”<sup>22</sup>

Briefly stated, a CER is “a record of information in electronic form that is susceptible to

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<sup>14</sup> Uniform Law Commission, A Summary of the 2022 Amendments to the Uniform Commercial Code, July 21, 2022, p. 1, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2a18c952-5db5-ca16-2274-8c7531990903\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678133136&Signature=df%2BRhGImNYrE%2FERndOnwsE5fa7I%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2a18c952-5db5-ca16-2274-8c7531990903_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678133136&Signature=df%2BRhGImNYrE%2FERndOnwsE5fa7I%3D) (last visited March 6, 2023).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

‘control’.’<sup>23</sup> “Control” refers to the “power to enjoy ‘substantially all the benefit’ of the CER,” “exclusive power to prevent others” from doing so, and “the exclusive power to transfer control or to cause another person to obtain control of the CER.”<sup>24</sup>

Control also entails a person’s ability to readily identify themselves to another as having the key powers noted above.<sup>25</sup> Identification can be made by means other than by name, and the “exclusivity requirement” can be satisfied even if the powers are shared through a “multi-signature” or other permissible relationship.<sup>26</sup> A person may obtain control through another.<sup>27</sup>

The Amendments provide a rebuttable presumption for purposes of determining control of a CER.<sup>28</sup>

In addition to excluding electronic records not susceptible to control, CER is defined to exclude certain digital assets that could otherwise fall within its definition because “commercial law rules already exist and generally work well for” them, including: “electronic chattel paper, electronic documents, investment property, transferable records under the federal E-SIGN law or the Uniform Electronic Transactions Act (“UETA”), deposit accounts, and electronic money.”<sup>29</sup>

Article 12 of the Amendments pertains to transfers of CERs.<sup>30</sup>

With one important exception, indicated in the Amendments and explained in the Summary document,

law other than Article 12 determines what rights are evidenced by the CER, and whether a “take-free” rule applies to those other rights (in addition to the CER itself) upon a transfer of the CER. For example, the amendments do not address the effect of copyright law as it relates to someone in control of a non-fungible token “tethered” to intellectual property. Other law determines the effect of that “tethering.” Similarly, if a CER purports to evidence an interest in real estate, whether the “take-free” rule applies to the interest in the real estate upon a transfer of control of the CER must be determined under other law, presumably the applicable real estate law.<sup>31</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 4. The exception is summarized as follows, and then described in more detail: “An important exception to this deference to other law applies when an ‘account’ or ‘payment intangible’ (as those terms are already defined in

The Amendment provisions that apply to purchasers of CERs

are coordinated with corresponding additional and existing provisions of Article 9 to govern security interests in CERs that are designed to preserve the availability of existing transaction patterns. Under the amendments, there is no need to change existing collateral descriptions in security agreements or existing collateral indications on financing statements.<sup>32</sup>

Provisions in the Amendments pertaining to account debtor discharge are generally similar to those contained in the current law concerning secured transactions.<sup>33</sup>

The Amendments contain “substantially identical choice-of-law rules for the Article 12 take-free rules for transferees of CERs and the Article 9 rules for perfection by control and priority of a security interest in a CER, controllable account, or controllable payment intangible perfected by control,” which generally follow the approach “taken in Articles 8 and 9 for financial assets credited to a securities account at a securities intermediary.”<sup>34</sup>

They include provisions to address electronic money.<sup>35</sup> The Summary of the Amendments explains the interplay between the current UCC definition of “money,” a “medium of exchange in an electronic record,” and a “CER,” as well as the perfection of security interests.<sup>36</sup>

The Amendments also make changes to the manner in which chattel paper is defined and treated under the UCC so that it aligns with CER concepts and generally eliminates the distinction between tangible and electronic chattel paper.<sup>37</sup>

Finally, as indicated below, the Amendments make some changes to the UCC provisions regarding negotiable instruments, payment systems, sales and leases of goods, and other miscellaneous amendments.<sup>38</sup>

### **UCC Provisions in New Jersey’s Statutes and the Impact of the Amendments**

Title 12A, Subtitle 1, of the New Jersey statutes contains the Uniform Commercial Code provisions divided into Chapters 1, 2, 2A, 3, 4, 4A, 5, 6, 7, 8, 9, 10, 11, and 12. (The 2022 Amendments refer to the subdivisions as Articles, rather than Chapters.)

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Article 9 of the UCC) is evidenced by a CER, creating a controllable account’ or ‘controllable payment intangible’ if the person obligated on the account or payment intangible has agreed to pay the person in control of the CER.”

<sup>32</sup> *Id.* at 5.

<sup>33</sup> *Id.* at 5-6.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6-7.

<sup>37</sup> *Id.* at 7.

<sup>38</sup> *Id.* at 8-10.

**Chapter 1**, found at N.J.S. 12A:1-101 to N.J.S. 12A:1-308, contains the general provisions, including general definitions, principles of interpretation, territorial applicability, and general rules.

The 2022 Amendments propose changes to the Official Comments for sections: 101, 103, 107, and 203.<sup>39</sup>

They propose changes to the substance and the Official Comments of the following sections: 201 (General Definitions), 204 (Value), 301 (Territorial Applicability; Parties' Power to Choose Applicable Law), and 306 (Waiver or Renunciation of Claim or Right after Breach).<sup>40</sup>

**Chapter 2**, found at N.J.S. 12A:2-101 to N.J.S. 12A:2-725, pertains to sales and contains provisions concerning: general construction and definitions; the formal requirements, formation, and readjustment of a contract; the general obligations of the parties and the construction of a contract; the passing of title, rights of creditors, and good faith purchasers; contract performance; breach, repudiation, and excuse; and remedies.

The 2022 Amendments propose changes to the Official Comments for sections 207, 316, 326, 403, 507, 605, 607, 609, 616, and 702.<sup>41</sup>

They propose changes to the substance and the Official Comments of the following sections: 102 (Scope; Certain Security and Other Transactions Excluded from this Article), 106 (Definitions), 201 (Formal Requirements; Statute of Frauds), 202 (Final Written Expression: Parole or Extrinsic Evidence), 203 (Seals Inoperative), 205 (Firm Offers), and 209 (Modification, Rescission, and Waiver).<sup>42</sup>

**Chapter 2A**, found at N.J.S. 12A:2A-101 to N.J.S. N.J.S. 12A:2A-532, pertains to leases, and contains provisions concerning: the formation and construction of a lease contract; its effect; repudiation, substituted performance, excused performance, and finance leases; and default.

The 2022 Amendments propose changes to the Official Comments for sections: 101, 214, 301, 303, 304, 307, 308, 309, 310, 401, 406, 504, 511, 514, 516, and 523.<sup>43</sup>

They propose changes to the substance and the Official Comments of the following sections: 102 (Scope), 103 (Definitions and Index of Definitions), 107 (Waiver or Renunciation of

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<sup>39</sup> Uniform Law Commission, UCC, 2022 Amendments to, Final Act, With Comments: Uniform Commercial Code Amendments (2022), p. 5-18, [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2e456b4d-7e6a-18b7-116c-7971f84a8393\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678077691&Signature=FL%2BMpeyX3dq6Qk6UZaTM6GiJF2E%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2e456b4d-7e6a-18b7-116c-7971f84a8393_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1678077691&Signature=FL%2BMpeyX3dq6Qk6UZaTM6GiJF2E%3D) (last visited March 5, 2023).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 18-33.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 33-49.

Claim or Right After Default), 201 (Statute of Frauds), 202 (Final Written Expression: Parole or Extrinsic Evidence), 203 (Seals Inoperative), 205 (Firm Offers), and 208 (Modification, Rescission, and Waiver).<sup>44</sup>

**Chapter 3**, found at N.J.S. 12A:3-101 to N.J.S. 12A:3-605, pertains to negotiable instruments and contains provisions concerning: the applicability of the chapter, definitions, and general provisions; negotiation, transfer, indorsement, and reacquisition; enforcement; liability and obligations; dishonor; and discharge and payment.

The 2022 Amendments propose changes to the Official Comments for sections: 309, 415, and 419.<sup>45</sup>

They propose changes to the substance and the Official Comments of the following sections: 104 (Negotiable Instruments), 105 (Issue of Instrument), 401 (Signature), and 604 (Discharge by Cancellation or Renunciation).<sup>46</sup>

**Chapter 4**, found at N.J.S. 12A:4-101 to N.J.S. 12A:4-504, pertains to bank deposits and collections and contains provisions concerning: applicability, definitions, and general provisions; the role and responsibilities of depository and collecting banks; the role and responsibilities of payor banks; the relationship between a payor bank and its customer; and documentary drafts.

The 2022 Amendments propose changes to the Official Comments for sections: 105 and 207.<sup>47</sup>

They do not propose changes to the substance of the sections in this Chapter.

**Chapter 4A**, found at N.J.S. 12A:4A-101 to N.J.S. 12A:4A-507, pertains to funds transfers and contains provisions concerning: definitions and the relationship to the Electronic Fund Transfer Act; issuance and acceptance, rejection, and cancellation of payment orders; execution of payment orders; payments and obligations; and additional provisions.

The 2022 Amendments propose changes to the Official Comments for sections: 104, 206, and 209.<sup>48</sup>

They propose changes to the substance and the Official Comments of the following sections: 103 (Payment Order – Definitions), 201 (Security Procedure), 202 (Authorized and Verified Payment Orders), 203 (Unenforceability of Certain Verified Payment Orders), 207 (Misdescription of Beneficiary), 208 (Misdescription of Intermediary Bank or Beneficiary’s

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* 49-54.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 55.

<sup>48</sup> *Id.* at 56-67.



Bank), 210 (Rejection of Payment Order), 211 (Cancellation and Amendment of Payment Order), and 305 (Liability for Late or Improper Execution or Failure to Execute Payment Order).<sup>49</sup>

**Chapter 5**, found at N.J.S. 12A:5-101 to N.J.S. 12A:5-118, pertains to letters of credit, and contains provisions concerning: formal requirements; consideration; issuance, amendment, cancellation, and duration; rights and obligations; warranties; remedies; and transfers.

The 2022 Amendments propose changes to the substance and the Official Comments of the following sections: 104 (Formal Requirements) and 116 (Choice of Law and Forum).<sup>50</sup>

**Chapter 6**, which was found at N.J.S. 12A:6-101 to N.J.S. 12A:6-111, pertained to bulk transfers and was repealed in 1994.

The 2022 Amendments do not contain any references to this repealed Chapter.

**Chapter 7**, found at N.J.S. 12A:7-101 to 12A:7-701, pertains to documents of title and contains provisions concerning: definitions, negotiable and nonnegotiable documents of title, and control of electronic documents of title; and general obligations, negotiation and transfer; and other provisions pertaining to bills of lading and warehouse receipts.

The 2022 Amendments propose changes to the Official Comments for sections: 403 and 504.<sup>51</sup>

They propose changes to the substance and the Official Comments of the following sections: 102 (Definitions and Index of Definitions) and 106 (Control of Electronic Document of Title).<sup>52</sup>

**Chapter 8**, found at N.J.S. 12A:8-101 to N.J.S. 12A:8-601, pertains to investment securities and contains provisions concerning: definitions, distinguishing between securities and financial assets, control, indorsement, warranties, and other general provisions; issuer rights, duties, responsibilities, and defenses; delivery, rights of the purchaser, indorsement and the effect of guarantees; registration, replacement, and authentication of a trustee, agent, and registrar; security entitlements; and a savings clause.

The 2022 Amendments propose changes to the Official Comments for sections: 105, 107, 116, 207, 501, 502, 505, and 510.<sup>53</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 69.

<sup>51</sup> *Id.* at 72-80.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 81-94.

They propose changes to the substance and the Official Comments of the following sections: 102 (Definitions and Index of Definitions), 103 (Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets), 106 Control), 110 (Applicability; Choice of Law), and 303 (Protected Purchaser).<sup>54</sup>

**Chapter 9**, found at N.J.S. 12A:9-101 to N.J.S. 12A:9-809, pertains to secured transactions and contains provisions concerning: definitions, the control of various instruments, and the applicability of the chapter; effectiveness and attachment of security agreements and security interests and the rights and duties of secured parties; perfection and priority of security interests and liens, and the rights of banks; rights of third parties; the contents and effectiveness of financing statements and the duties and operation of the filing office; default, the enforcement of security interests, and noncompliance with the chapter; and transition provisions.

The 2022 Amendments propose changes to the Official Comments for sections: 101, 108, 109, 322, 401, 403, 502, 508, 516, 602, 610, 612, and 627.<sup>55</sup>

They propose changes to the substance and the Official Comments of the following sections: 102 (Definitions and Index of Definitions), 104 (Control of Deposit Account), 105 (Control of Electronic Chattel Paper), 105A (new section – Control of Electronic Money), 107A (new section – Control of Controllable electronic Record, Controllable Account, or Controllable Payment Intangible), 107B (new section – No Requirement to Acknowledge or Confirm; No Duties), 203 (Attachment and Enforceability of Security Interest; Proceeds; supporting Obligations; Formal Requisites), 204 (After-Acquired Property; Future Advances), 207 (Rights and Duties of Secured Party Having Possession or Control of Collateral), 208 (Additional Duties of Secured party Having Control of Collateral), 209 (Duties of Secured Party if Account Debtor Has Been Notified of Assignment), 210 (Request for Accounting; Request Regarding List of Collateral or Statement of Account), 301 (Law Governing Perfection and Priority of Security Interests), 304 (Law Governing Perfection and Priority of Security Interests in Deposit Accounts), 305 (Law Governing Perfection and Priority of Security Interests in Investment Property), 306A (new section – Law Governing Perfection and Priority of Security Interests in Chattel Paper), 306B (new section – Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles), 310 (When Filing Required to Perfect Security Interest of Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply), 312 (Perfection of Security Interests in Chattel Paper, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession), 313 (When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing), 314 (Perfection by Control), 314A (new section – Perfection by Possession and Control of Chattel Paper), 316

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* 95-228.

(Continued Perfection of Security Interest Following Change in Governing Law), 317 (Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien), 323 (Future Advances), 324 (Priority of Purchase-Money Security), 326A (new section - Priority of Security Interest in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible), 330 (Priority of Purchaser of Chattel Paper or Instrument), 331 (Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8), 332 (Transfer of Money; Transfer of Funds from Deposit Account), 334 (Priority of Security Interests in Fixtures and Crops), 341 (Bank's Rights and Duties with Respect to Deposit Account), 404 (Rights Acquired by Assignee; Claims and Defenses Against Assignee), 406 (Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective), 408 (Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective), 509 (Persons entitled to File a Record), 513 (Termination Statement), 601 (Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes), 605 (Unknown Debtor of Secondary Obligor), 608 (Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus), 611 (Notification Before Disposition of Collateral), 613 (Contents and Form of Notification Before Disposition of Collateral: General), 614 (Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction), 615 (Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus), 616 (Explanation of Calculation of Surplus or Deficiency), 619 (Transfer of Record or Legal Title), 620 (Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral), 621 (Notification of Proposal to Accept Collateral), 624 (Waiver), and 628 (Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor).<sup>56</sup>

**Chapter 10**, found at N.J.S. 12A:10-102 to 12A:10-106, concerns the construction of the UCC, the impact on common law rights and remedies, and the effective date of the 1961 provisions. Sections 101, 104, and 105 were repealed in 2001.

The 2022 Amendments do not contain any references to this Chapter.

**Chapter 11**, which was found at N.J.S. 12A:11-101 to N.J.S. 12A:11-108, contained the provisions pertaining to the transition from the original Chapter 9 to the Amended Chapter 9, and was repealed in 2001.

The 2022 Amendments do not contain any references to this Chapter.

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<sup>56</sup> *Id.*

**Chapter 12**, found at N.J.S. 12A:12-1 to N.J.S. 12A:12-26 contains the provisions of the Uniform Electronic Transactions Act, enacted in 2001.

In the 2022 Amendments, **Article 12 is a new section**, which pertains to Controllable Electronic Records. It contains the following: Prefatory Note to Article 12, Section 12-101 (Title), Section 12-102 (Definitions), Section 12-103 (Relation to Article 9 and Consumer Laws), Section 12-104 (Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible), Section 12-105 (Control of Controllable Electronic Record), Section 12-106 (Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible), and Section 12-107 (Governing Law).<sup>57</sup>

The 2022 Amendments also contain an **Article A**, divided into Parts 1 through 4, which contain transitional provisions for the Amendments and an Effective Date provision.<sup>58</sup>

### **New Jersey-Specific Variations and the Impact of 2002 and 2018 UCC Updates Not Yet Enacted in New Jersey**

For purposes of enacting the 2022 Amendments, it is useful to identify provisions in New Jersey law that vary from the UCC language recommended by the ULC. The ULC does not maintain records of state variance from the uniform language, but Thomson Reuters Westlaw provides access to a Uniform Commercial Code State Variation Service, which contains information about the manner in which the law in each state varies from the uniform version of the UCC provisions.

Staff reviewed the information available through Westlaw to identify UCC provisions contained in the New Jersey statutes that are impacted by the 2022 Amendments **and** that differ in some way from the uniform provisions recommended by the ULC. There are a number of such provisions. In some cases, the differences appear to be non-substantive; when subsection letters are used instead of numbers, or when the language was made gender neutral when enacted in New Jersey. In other cases, the differences are substantive; when, for example, the language as enacted in New Jersey involves a choice of a ULC-drafted alternative provision or option, or when language is contained in the New Jersey statutes that does not appear in the ULC version of the UCC.

In addition, Staff spoke with a representative of the ULC to discuss the impact of the 2002 amendments to Articles 3 and 4, and the 2018 amendments to Article 9 (concerning Sections 9-406 and 9-408) that have not yet been enacted in New Jersey.<sup>59</sup> It is recommended that the sections of Articles 3 and 4 that are impacted by the 2022 Amendments be updated to reflect the earlier

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<sup>57</sup> *Id.* at 229-260.

<sup>58</sup> *Id.* at 265-280.

<sup>59</sup> Telephone conference between Laura C. Tharney, Executive Director, New Jersey Law Revision Commission, and Benjamin Orzeski, Chief Counsel, Uniform Law Commission, March 9, 2023, 2:39 p.m.

2002 amendments at the time of the enactment of the 2022 Amendments.<sup>60</sup> It is also recommended that the two sections of Article 9 that were amended in 2018 be updated to reflect those earlier amendments at the time of the enactment of the 2022 Amendments.<sup>61</sup>

The table below was prepared using the Uniform Commercial Code State Variation Service available through Thomson Reuters Westlaw. It identifies sections of the UCC impacted by the 2022 Amendments that vary in some way from the ULC’s UCC language.<sup>62</sup> It indicates whether those variations appear to be substantive or non-substantive. The table also identifies sections of the UCC impacted by the 2002 and 2018 UCC amendments mentioned above.

**Table Identifying NJ UCC Provisions That Differ from ULC Language**

UCC section	Enacted in NJ with non-substantive variation	Enacted in NJ with substantive variation	Update with 2002 Article 3 and 4 amendments at time of enactment	Update with 2018 Article 9 amendments at time of enactment
<b>Article 1</b>				
1-101	X			
1-201		X		
<b>Article 2</b>				
2-313.1		X (non-code section added)		
2-313.2		X (non-code section added)		
2-329 to 2-336		X (non-code sections added: Artworks Consignment Act)		
2-403		X		
<b>Article 2A</b>				
2A-101	X			
2A-202	X			
2A-303	X			
2A-304	X			
2A-309	X			
2A-310	X			
2A-504	X			
2A-511	X			
2A-516	X			
<b>Article 3</b>				
3-104			Comment change	
3-309			Text and comment change	

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> The table uses the UCC, rather than the New Jersey, designations (“Article” rather than “Chapter” and UCC formatting of the section numbers).

3-415			Comment change	
3-419			Text and comment change	
3-604			Text and comment change	
<b>Article 4</b>				
4-105	X		Title changed	
4-207	X		Text and comment change	
<b>Article 4A</b>				
4A-103	X			
4A-202	X			
4A-203	X			
4A-207	X			
4A-208	X			
4A-209	X			
4A-210	X			
4A-211	X			
4A-305	X			
<b>Article 5</b>				
5-104	X			
5-116	X			
<b>Article 7</b>				
7-102		X		
7-403		X		
<b>Article 8</b>				
8-102	X			
8-103	X			
8-106	X			
8-107	X			
8-110	X			
<b>Article 9</b>				
9-101	X			
9-102		X		
9-108		X		
9-109		X		
9-203		X		
9-211		X (blank non-code section added)		
9-301		X		
9-310	X			
9-317		X		
9-334	X			
9-406		X		X
9-408		X		X
9-502		X		
9-516		X		
9-605	X			

9-628	X			
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### **Conclusion**

Having considered the revisions to the Uniform Commercial Code included in the 2022 Amendments prepared by the Uniform Law Commission and the American Law Institute, the New Jersey Law Revision Commission recommends enactment of those Amendments, as well as certain amendments to Articles 3 and 4 (from 2002) and Article 9 (from 2018) as explained above.